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26 FEB 2008

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In re Application of  
FORSTNER, Klaus  
U.S. Application No. 10/556,652  
PCT No.: PCT/DE04/00515  
Int. Filing Date: 15 March 2004  
Priority Date: 13 May 2003  
Attorney Docket No.: HKH-23PCT  
For: METHOD AND DEVICE FOR  
DETERMINING BLOOD  
COMPONENTS USING RATIO METRIC  
ABSOLUTE PULSE SPECTROSCOPY

DECISION ON REQUEST

This decision is in response to applicant's "Request to Withdraw Holding of Abandonment" filed 11 February 2008, which is being treated as a petition under 37 CFR 1.181 requesting withdrawal of the Notification of Abandonment mailed by the Office on 31 January 2008. No petition fee is required.

**BACKGROUND**

On 15 March 2004, applicant filed the above-captioned international application which claimed a priority date of 13 May 2003 and designated the United States. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 25 November 2004. Pursuant to 37 CFR 1.495, the thirty-month period for paying the basic national fee in the United States expired at midnight on 13 November 2005.

On 13 November 2005, applicant filed a transmittal letter for entry into the national stage in the United States which was accompanied by, *inter alia*,: the basic national fee; a copy of the international application; an unexecuted declaration; and a preliminary amendment.

On 27 September 2006, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an executed oath or declaration in compliance with 37 CFR 1.497 was omitted. A new oath or declaration in compliance with 37 CFR 1.497 and a surcharge for providing the oath or declaration later than 30 months from the priority date were required. The notification set a two-month time limit in which to respond.

On 31 January 2008, the United States Elected Office mailed a Notification of Abandonment under 37 CFR 1.495 (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to file a complete response to the Notification of Missing Requirements mailed 27 September 2006 within the time period set therein.

On 11 February 2008, applicant filed the present "Request to Withdraw Holding of Abandonment."

### DISCUSSION

Applicant states in their present petition that a declaration and power of attorney was received at the United States Patent and Trademark Office on 16 November 2006. Section 503 of the Manual of Patent Examining Procedure under the heading "RETURN POSTCARD" states, in part:

"If a receipt of any paper filed in the Patent and Trademark Office is desired, it may be obtained by enclosing with the paper a self-addressed postcard identifying the paper. The Patent and Trademark Office will stamp the receipt date on the card and place it in the outgoing mail.

A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO."

Here, applicant has provided a copy of their date-stamped filing receipt. The receipt identifies the application by applicant, application serial number, and docket number. The receipt itemizes, *inter alia*, an Executed Declaration. The receipt is stamped "PCT/PTO 16 November 2006" across its face. However, a review of the application file reveals that the declaration filed on 16 November 2006 is not located therein and applicant has not submitted a true copy of the declaration with the present petition. At this time, it is not appropriate for the Office to withdraw the Notification of Abandonment (Form PCT/DO/EO/909) mailed 31 January 2008 without a true copy of the declaration filed on 16 November 2006.

### CONCLUSION

For the reasons discussed above, applicant's petition is DISMISSED without prejudice.

Applicant is hereby given a **TWO (2) MONTH** time period from the mail date of this communication in order to file a proper response. A proper response must include a true copy of an acceptable declaration alleged to have been filed on 16 November 2006 together with an appropriate statement verifying that the declaration is a true copy.

Extensions of time under 37 CFR 1.136(a) are available.

Any further correspondence with respect to this matter deposited with the United States Postal Service should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

  
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